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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,766	10/23/2001	Chaoying Zhang	AUD1P009	7541

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EXAMINER	
HARVEY, DIONNE	

ART UNIT	PAPER NUMBER
2643	

DATE MAILED: 04/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/037,766	**Applicant(s)** ZHANG ET AL.	
	Examiner Dionne N Harvey	**Art Unit** 2643	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 March 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Response to Arguments

1. Applicant's arguments filed **3/14/2005** have been fully considered but they are not persuasive.

2. Regarding the Applicant's arguments that: "Alsafadi et al. has nothing to do with a hearing aid device or upgrade of a hearing aid device. Hence, Alsafadi et al. does not teach or suggest device information from a hearing aid device..."

In response to applicant's arguments against the Alsafadi reference individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

3. **On page 3, paragraph 2**, the Applicant argues: "***On page 6*** of the Office Action, the Examiner points to ***column 4, lines 33-40*** of Weidner as being relevant..." However, the Examiner is unable to identify that portion of ***page 6*** of the Office Action wherein the Examiner is alleged to rely upon ***column 4, lines 33-40*** of Weidner for a particular teaching. Therefore, the Applicant's arguments have not been further addressed.

4. **On page 3, paragraph 3**, the Applicant argues "...the combination of Alsafadi et al. with Weidner is inappropriate.... there is nothing in Alsafadi et al. that teaches or suggests to one of ordinary skill in the art that the reconfiguration manager described in Alsafadi et al. could be utilized to upgrade a hearing aid device... there is no adequate motivation of record that would lead one skilled in the art to combine these references as the Examiner proposes."

However, the Examiner's rejection is maintained since said motivation for combining said references is clearly disclosed in the Office Action mailed **1/12/2005**, wherein the Examiner explains :

> "AlSafadi teaches that the invention may be used for reconfiguration of software or other components of an electronic device such as a computer, PDA, set-top box, television, telephone or any other type of consumer electronic processing device (**see column 3, lines 16-21**) **and therefore does not restrict to any particular device.**
>
> AlSafadi does not clearly teach that the electronic device is a hearing aid device. [However,] Weidner teaches that there is a recognized need in the art for providing program adjustments in hearing aid devices for the purpose of adapting to the changing hearing behavior of its' wearer over time (see **column 3, lines 43-50**). In **column 4, lines 15-26**, Weidner further teaches that it is well known in the art to upgrade a hearing device using software which may be transferred to the hearing device with a programming tool. Since both AlSafadi and Weidner are concerned with a system for upgrading electronic consumer devices, it would have been obvious for one of ordinary skill in the art at the time the invention was made to combine the teachings of AlSafadi and Weidner, which would permit the reconfiguration of hearing aid devices over a network, thereby more easily facilitating the upgrade of these complex devices (**see, "BACKGROUND" in AlSafadi reference**)."

5. **On page 4**, the Applicant argues "A patient's name is not device information." However, this is not persuasive since, as taught by the Putvinski reference, a patient's name may be used to identify the operating conditions of said electronic device, said patient's name i.e. device information, being used so as to facilitate the upgrade of information to said electronic device.

6. **On page 5**, with respect to **claim 22**, the Applicant argues "Putvinski does not teach or suggest any means to verify that the upgraded software received or to be received from a remote hearing aid server is for use by a hearing aid device that a requesting device requests to upgrade."

However, the claim does not specifically recite that device information is sent to the requesting device and is then compared to the "received information", all **prior** to upgrading the hearing device. On **page 6, lines 13-26,** Putvinski teaches that the host computer **116**, reads the name of the first patient whose hearing device information has been stored in the EEPROM, and upon locating similarly identified data within said host computer **116**, an identifier for said similarly identified data is returned to the requesting device **110** such that an audiologist may compare and confirm that the identifier for said similarly identified data in computer **116**, matches **the identifier for that data which was received in the past from the programming unit 110**; the same being recently upgraded.

While Putvinski teaches that the "receiving", "returning" and "comparing" of device information takes place after the hearing device has been upgraded, since the

Applicant fails to clearly recite in **claim 22**, that the "receiving", "returning" and "comparing" of device information takes prior to upgrading the hearing aid device, the rejection is therefore maintained.

GEORGE ENG
PRIMARY EXAMINER